IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.8195 OF 2005

Maharashtra State Financial Corporation & Anr. .... Petitioners
Vs.
General Secretary, Engineering and Metal Kamgar Union, Sangli & Ors. .... Respondents

Ms Deepa Chavan i/b M/s. M.P. Rege & Co. for the Petitioners.

Shri M.S. Topkar for the Respondent (No.1).

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 20, 2006

P.C:

1. Heard. The petitioners challenge the interim order dated 5-4-2005 passed by the Industrial Court, Sangli in Complaint (ULP) No.16 of 2005. The challenge to the impugned order is that the petitioners, who are financial corporations, cannot be termed as the employers indulging in unfair labour practices merely by taking resort to the provisions of Section 29(5) of the State Financial Corporations Act, 1951, hereinafter called as "the said Act". It is the contention of the petitioners that the complaint has been filed against the petitioners essentially on the allegation of commission of unfair labour practices towards the complainant when the petitioners are not the employers

but are merely financial corporations and have taken action to recover the dues payable by the employer of the respondents/employees, in terms of the provisions of the said Act. Reliance is sought to be placed in the decision of the learned single Judge of the Kerala High Court in the matter of **Kerala Financial Corporation v. Collector of Central Excise,** reported in 1993 (63) E.L.T. 16 (Ker.).

2. Undisputedly, the impugned order is an interim order. The issue as to whether the petitioners could be joined as parties to the proceedings in the complaint filed before the Industrial Court under the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 on the basis of the allegations in the complaint is yet to be decided by the Industrial Court. The parties will have ample opportunity in that regard to lead evidence and invite proper judgment of the Industrial Court on the said issue. Undisputedly, the assets of the employer of the respondents/employees are in the custody of the petitioners. There is specific allegation on the part of the employees about non-implementation of the award in their favour by the employer. In these circumstances, considering the provisions of Section 29(5) of the said Act, prima facie one cannot find fault with the respondents for having joined the petitioners

as parties to the proceedings. Whether ultimately the respondents/employees will succeed in getting favourable order against the petitioners or not in such proceedings is yet to be decided by the Industrial Court. By the impugned order, the Industrial Court has merely directed to deposit the sale proceeds received by the petitioners in relation to the assets of the employer of the respondents/employees. Needless to say that in case such sale proceeds factually exceeds the total amount payable under the award to the employees, nothing prevents the petitioners from moving the Industrial Court to discharge the excess amount in favour of the petitioners and in case such an application is filed, the Industrial Court will have to consider the same on merits and in accordance with the provisions of law.

3. The decision of the Kerala High Court in **Kerala Financial Corporation's** case (supra) is of no help to the petitioners at this stage. In the said case, the Deputy Tahsildar had issued notice against the Corporation alleging it to be a defaulter in place of the firm against whom the Corporation had proceeded to take action in terms of the provisions of the said Act and in that context the learned single Judge of the Kerala High Court had observed that the Corporation cannot be accused of being a defaulter. That is not the case in the matter in hand.

4. In the circumstances, the impugned order does not disclose any jurisdictional error on the part of the Industrial Court so as to warrant interference in writ jurisdiction under Article 227 of the Constitution of India. Hence the petition fails and is hereby rejected.

(R.M.S. Khandeparkar, J.)

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